

## § 905.300

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(e) *Procedure for an emergency or a final request for natural disaster funds.* In the request the PHA shall:

(1) Identify the public housing project(s) with the emergency or natural disaster condition(s).

(2) Identify and provide the date of the conditions that present an unforeseen or unpreventable threat to the health, life, or safety of residents, in the case of emergency; or Natural disaster (e.g., hurricane, tornado, etc.).

(3) Describe the activities that will be undertaken to correct the emergency or the conditions caused by the natural disaster and the estimated cost.

(4) Provide an independent assessment of the extent of and the cost to correct the condition. The assessment must be specific as to the damage and costs associated with the emergency or natural disaster. An independent estimate of damage and repair cost is required as a part of the final natural disaster application. For natural disasters, the assessment must identify damage specifically caused by the natural disaster. The set-aside can be used only to pay costs to repair or replace a public housing project damaged as a result of the natural disaster, not for nonroutine maintenance or other improvements.

(5) Provide a copy of a currently effective DOT covering the property and an opinion of counsel that there are no preexisting liens or other encumbrances on the property.

(6) Demonstrate that without the requested funds from the set-aside, the PHA does not have adequate funds available to correct the emergency condition(s).

(7) Identify all other sources of available funds (e.g., insurance proceeds, FEMA).

(8) Any other material required by HUD.

(f) *HUD Action.* HUD shall review all requests for emergency or natural disaster funds. If HUD determines that a PHA's request meets the requirements of this section, HUD shall approve the request subject to the availability of funds in the set-aside, in the order in which requests are received and are determined approvable.

(g) *Submission of the CF ACC.* Upon being provided with a CF ACC Amendment from HUD, the PHA must sign and date the CF ACC Amendment and return it to HUD by the date established by HUD. HUD will execute the signed and dated CF ACC Amendment submitted by the PHA.

### Subpart C—General Program Requirements

SOURCE: 78 FR 63773, Oct. 24, 2013, unless otherwise noted.

#### § 905.300 Capital fund submission requirements.

(a) *General.* Unless otherwise stated, the requirements in this section apply to both qualified PHAs (as described in § 903.3(c) of this chapter) and non-qualified PHAs. Each PHA must complete a comprehensive physical needs assessment (PNA).

(1) *Applicability.* Small PHAs (PHAs that own or operate fewer than 250 public housing units) must comply with the requirements of this section beginning 30 days after the end of the federal fiscal year quarter following HUD's publication of a notice in the FEDERAL REGISTER.

(2) [Reserved]

(b) *Capital Fund program submission requirements.* At the time that the PHA submits the ACC Amendment(s) for its Capital Fund Grants(s) to HUD, the PHA must also submit the following items:

(1) *CFP 5-Year Action Plan.* (i) *Content.* The CFP 5-Year Action Plan must describe the capital improvements necessary to ensure long-term physical and social viability of the PHA's public housing developments, including the capital improvements to be undertaken within the 5-year period, their estimated costs, status of environmental review, and any other information required for participation in the CFP, as prescribed by HUD. In order to be entitled to fungibility, PHA's must have an approved 5-year Action Plan. Except in the case of emergency/disaster work, the PHA shall not spend Capital Funds on any work that is not included in an approved CFP 5-Year Action Plan and its amendments.

(ii) *Budget.* The Capital Fund Budget for each of the 5 years shall be prepared by a PHA using the form(s) prescribed by HUD. Work items listed in the budget must include, but are not limited to, the following:

(A) Where a PHA has an approved Capital Fund Financing Program (CFFP) loan, debt service payments for the grants from which the payments are scheduled;

(B) Where a PHA has an approved CFFP loan, the PHA shall also include all work and costs, including debt service payments, in the CFP 5-Year Action Plan. Work associated with the use of financing proceeds will be reported separately in a form and manner prescribed by HUD; or

(C) Work affecting health and safety and compliance with regulatory requirements such as section 504 of the Rehabilitation Act of 1973 and HUD's implementing regulations at 24 CFR part 8, and the lead-based paint poisoning prevention standards at 24 CFR part 35, before major systems (e.g., heating, roof, etc.) and other costs of lower priority.

(iii) *PHA Criteria for Significant Amendment or Modification.* The PHA must include in the basic criteria that the PHA will use for determining a significant amendment or modification to the CFP 5-Year Action Plan. In addition to the criteria established by the PHA, for the purpose of the CFP, a proposed demolition, disposition, home-ownership, Capital Fund financing, development, or mixed-finance proposal are considered significant amendments to the CFP 5-Year Action Plan.

(iv) *Submission.* The PHA must submit a Board-approved CFP 5-Year Action Plan at least once every 5 years. The PHA may choose to update its CFP 5-Year Action Plan every year. The PHA shall indicate whether its CFP 5-Year Action Plan is fixed or rolling. Prior to submission to HUD, the 5-Year Action Plan must have been approved by the PHA's Board of Commissioners. In any given year that a PHA does not have a CFP 5-Year Action Plan that is approved by the PHA Board of Commissioners and HUD, the Capital Fund grant(s) for these PHAs will be reserved and obligated; however, the PHA will not have access to those

funds until its CFP 5-Year Action Plan is approved by the PHA Board of Commissioners and HUD.

(v) Significant amendments or modification to the CFP 5 Year Action Plan. PHAs making significant amendments or modifications to the CFP 5-Year Action Plan, as defined in paragraph (b)(1)(iii) of this section, must follow the requirements of this section.

(A) A PHA after submitting its 5-Year Action Plan may amend or modify the plan. If the amendment or modification is a significant amendment or modification, as defined in paragraph (b)(1)(iii) of this section, the PHA:

(1) May not adopt the amendment or modification until the PHA has duly called a meeting of its Board of Commissioners (or similar governing body) and the meeting at which the amendment or modification is adopted, is open to the public; and

(2) May not implement the amendment or modification until notification of the amendment or modifications are provided to HUD and approved by HUD in accordance with HUD's plan review procedures, as provided in paragraph (b)(6) of this section.

(B) Each significant amendment or modification to a plan submitted to HUD is subject to the requirement of paragraph (b)(3) of this section.

(2) *Certifications required for receipt of Capital Fund grants.* The PHA is also required to submit various certifications to HUD, in a form prescribed by HUD, including, but not limited to:

(i) Certification of PIC Data;

(ii) Standard Form—Disclosure of Lobbying Activities;

(iii) Civil Rights Compliance, in a form prescribed by HUD; and

(iv) Certification of Compliance with Public Hearing Requirements.

(3) *Conduct of public hearing and Resident Advisory Board Consultation.* A PHA must annually conduct a public hearing and consult with the Resident Advisory Board (RAB) of the PHA to discuss the Capital Fund submission. The PHA may elect to conduct a separate annual public hearing in order to solicit public comments or to hold the annual public hearing at the same time as the hearing for the Annual PHA Plan, the 5-Year Plan, or the required

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annual hearing for qualified public housing authorities. The hearing must be conducted at a location that is convenient to the residents served by the PHA.

(i) Not later than 45 days before the public hearing is to take place, the PHA must:

(A) Make the Capital Fund submission along with the material required under this paragraph (b) available to the residents and the RAB; and

(B) Publish a notice informing the public that the information is available for review and inspection; that a public hearing will take place on the plan; and of the date, time, and location of the hearing.

(C) PHAs shall conduct reasonable outreach activities to encourage broad public participation in the review of the Capital Fund submission.

(4) *Public and RAB comments.* The PHA must consider the comments from the residents, the public, and the RAB on the Capital Fund submission, or any significant modification thereto. In submitting the final CFP 5-Year Action Plan to HUD for approval, or any significant amendment or modification to the 5-Year Action Plan to HUD for approval, the PHA must include a copy of the recommendations made by the RAB(s) and a description of the manner in which the PHA addressed these recommendations.

(5) *Consistency with Consolidated Plan.* The Capital Fund submission must be consistent with any applicable Consolidated Plan.

(6) *HUD review and approval.* The CFP submission requirements must meet the requirements of this part as well as the Public Housing Program Requirements as defined in § 905.108 of this part. A PHA is required to revise or correct information that is not in compliance, and HUD has the authority to impose administrative sanctions until the appropriate revisions are made. HUD will review the CFP submission requirements to determine whether:

(i) All of the information that is required to be submitted is included;

(ii) The information is consistent with the needs identified in the PNA and data available to HUD; and

(iii) There are any issues of compliance with applicable laws, regulations,

or contract requirements that have not been addressed with the proposed use of the Capital Fund.

(7) *Time frame for submission of CFP requirements.* The requirements identified in this paragraph (b) must be submitted to HUD, in a format prescribed by HUD, at the time that the PHA submits its signed CF ACC Amendment.

(8) *Performance and Evaluation Report.*

(i) All PHAs must prepare a CFP Annual Statement/Performance and Evaluation Report at a time and in a format prescribed by HUD. These reports shall be retained on file for all grants for which a final Actual Modernization Cost Certificate (AMCC) or an Actual Development Cost Certificate (ADCC) has not been submitted. A final Performance and Evaluation Report must be submitted in accordance with 24 CFR 905.322, at the time the PHA submits its AMCC or ADCC.

(ii) PHAs that are designated as troubled performers under PHAS (24 CFR part 902) or as troubled under the Section 8 Management Assessment Program (SEMAP) (24 CFR part 985), and/or were identified as noncompliant with section 9(j) obligation and expenditure requirements during the fiscal year, shall submit their CFP Annual Statement/Performance and Evaluation Reports to HUD for review and approval.

(iii) All other PHAs, that are not designated as troubled performers under PHAS and are not designated as troubled under SEMAP, and that were in compliance with section 9(j) obligation and expenditure requirements during the fiscal year, shall prepare a CFP Annual Statement/Performance and Evaluation report for all open grants and shall retain the report(s) on file at the PHA, to be available to HUD upon request.

(9) *Moving to Work (MTW) PHAs.* MTW PHAs are to submit the Capital Fund submissions as part of the MTW Plan annually, as required by the MTW Agreement.

(c)–(d) [Reserved]

### § 905.302 Timely submission of the CF ACC amendment by the PHA.

Upon being provided with a CF ACC Amendment from HUD, the PHA must sign and date the CF ACC Amendment